

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 04-0121
GROSS RETAIL TAX
For 2000 and 2001**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Sales of Goods to Out-of-State Destinations – Gross Retail Tax.

Authority: IC 6-2.5-2-1(a); IC 6-8.1-5-1(b); 45 IAC 2.2-2-2.

Taxpayer argues that two invoices were included in the audit's sample report that were not subject to sales tax because the two invoices were for items that were sent to out-of-state customers.

STATEMENT OF FACTS

Taxpayer is an in-state company in the business of manufacturing and selling both at retail and wholesale items such as commemorative plaques, certificates, and trophies. The Department of Revenue (Department) conducted an audit review of taxpayer's business records. Due to the large number of sales invoices involved, the audit prepared a sample report for each of the two audit periods. Two individual sales were recorded in the February 2000 sample for which the audit determined that taxpayer should have collected sales tax. The audit did so on the ground that "[b]oth sales were clearly coded on the sales invoice as being held/stored in Indiana." The audit provided taxpayer with an opportunity to supply information showing that the sales were actually made to out-of-state customers. According to the audit, taxpayer "was unable to provide the shipping detail for these two sales."

Taxpayer submitted a protest, the issue was assigned to a hearing officer, an administrative hearing was held, and this Letter of Findings results.

DISCUSSION

I. Sales of Goods to Out-of-State Destinations – Gross Retail Tax.

As a threshold issue, taxpayer's original protest letter suggested certain other adjustments to which taxpayer felt it was entitled. However, at the administrative hearing, taxpayer only addressed the issue of whether it should have collected sales tax on the two purportedly out-of-state sales invoices.

The audit determined that taxpayer should have collected sales tax on two sales invoices which totaled approximately \$520. Taxpayer disagreed stating that the two sales were for items which had been prepared for – but not shipped to – an out-of-state customer.

IC 6-2.5-2-1(a) states that, “An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.” 45 IAC 2.2-2-2 requires that a retail seller, “[A]cting as an agent for the state of Indiana, must collect the tax.”

The audit was unable to agree that the two transactions occurred outside Indiana. To the contrary, the audit concluded that “[b]oth sales were clearly coded on the sales invoice as being held/stored in Indiana.” In effect, the audit found that the two invoices evidenced “retail transactions made in Indiana.” IC 6-2.5-2-1(a) Because taxpayer failed to charge or collect the sales tax, the audit assessed taxpayer sales tax on the purchase price indicated on each of the two invoices.

IC 6-8.1-5-1(b) states, “The notice of proposed assessment is prima facie evidence that the department’s claim for the unpaid tax is valid. The *burden of proving* that the proposed assessment is wrong rests with the person against the proposed assessment is made.” (*Emphasis added*).

Taxpayer’s representative indicated that documentary evidence would be presented subsequent to the hearing demonstrating that the two invoiced transactions were for sales made to out-of-state customers. Just as it did while the audit was being conducted, taxpayer failed to provide the evidence. Instead, taxpayer seems to rely wholly on its bare assertion that it was not required to collect Indiana sales tax; unfortunately, this bare assertion is – standing alone – insufficient, and taxpayer has failed to meet its burden of “proving that the proposed assessment is wrong” Id.

FINDING

Taxpayer’s protest is respectfully denied.

DK/SP/JM – 062703